

Rule 5 Submission

- + Notice of Intent
- + 327 IAC 15-5
- + Developers Continuing Responsibility
- + Outstanding State Resource Waters
- + Exceptional-Use Waters

Notice of Intent

327 IAC 15-5

Developers Continuing Responsibility

Outstanding State Resource Waters

1. The Blue River in Washington, Crawford and Harrison Counties from river kilometer 91.77 to river kilometer 18.52.
2. Cedar Creek in Allen and DeKalb Counties from river kilometer 22.06 to its confluence with the St. Joseph River.
3. The North Fork of Wildcat Creek in Carroll and Tippecanoe Counties from river kilometer 69.41 to river kilometer 7.76.
4. The South Fork of Wildcat Creek in Tippecanoe County from river kilometer 16.44 to river kilometer 0.00.
5. The Indiana portion of Lake Michigan.
6. All waters incorporated in the Indiana Dunes National Lakeshore.

Exceptional-Use Waters

1. Big Pine Creek in Warren County downstream of the State Road 55 bridge near the Town of Pine Village to its confluence with the Wabash River.
2. Mud Pine Creek in Warren County from the bridge on the County road between Brisco and Rainsville to its confluence with Big Pine Creek.
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4. Indian Creek in Montgomery County from the County Road 650 West bridge downstream to its confluence with Sugar Creek.
5. Clifty Creek in Montgomery County within the boundaries of Pine Hills Nature Preserve.
6. Bear Creek in Fountain County from the bridge on County Road 450 North to its confluence with the Wabash River.
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11. Lost River and all surface and underground tributaries upstream from the Orangeville Rise (T2N, R1W, Section 6) and the Rise of Lost River (T2N, R1W, Section 7) and the mainstream of the Lost River from the Orangeville Rise.

RULE 5 SUBMISSION

Exhibit 9-4D

EXHIBIT 4

Rule 5 Submission

- + Notice of Intent
- + 327 IAC 15-5
- + Developer's Continuing Responsibility
- + Outstanding State Resource Waters
- + Exceptional-Use Waters



Indiana Department of Environmental Management
Notice of Intent (NOI)
 Storm Water Runoff Associated with Construction Activity
 NPDES General Permit Rule 327 IAC 15-5 (Rule 5)

Submission of this Notice of Intent letter constitutes notice that the operator is applying for coverage under the National Pollutant Discharge Elimination System (NPDES) General Permit Rule for Storm Water Discharges Associated with Construction Activity (see 327 IAC 15-2-5 (c) for definition of operator). Permitted operators are required to comply with all terms and conditions of the General Permit Rule 327 IAC 15-5 (Rule 5).

Construction Project:

Name: _____ County: _____

SIC Code or Description of Project: _____

Location: _____

Operator Name: _____ Phone: _____

Company Name: _____

Complete Address: _____

Contact Person (if different from above): _____

Complete Address (if different from above): _____

_____ Phone: _____

Affiliation with operator: _____

Ownership Status: (check one) Federal _____ State _____ Public (other than Federal or State) _____

Private _____ Other _____

Location: Latitude & Longitude _____ Or Quarter _____ Section _____

_____ Township _____ Range _____

Name of Receiving Water (and if applicable, name of municipal operator of storm sewer): _____

Please note: Even if a retention pond is present on the property, the name of the nearest possible receiving water is required.

Acreage: Total acreage: _____ Acreage to be Disturbed: _____

Timetable: Start Date: _____ Estimated End Date: _____

Please note: The operator is responsible for all construction activities within the boundaries of the project until all construction is complete. If individual lots are to be sold within a subdivision or commercial park, the operator should consider developing contractual agreements to bind lot buyers and builders to compliance with the Soil Erosion Control Plan established by the operator, and to indemnify the operator for any violations. An example of a contractual clause of this nature may be obtained by contacting IDEM, Office of Water Management, Rule 5 Desk at 317/ 232-8760.

Exclusions From Coverage Under the General Permit:

1. Storm water discharges excluded by any provision of 327 IAC 15-2-3
2. Storm water discharges to an outstanding state resource water as listed in 327 IAC 2-1-2(3) or to an exceptional use resource water defined in 327 IAC 2-1-11(b)

Soil Erosion Control Plan Certification:

By signing this Notice of Intent letter, I, the operator, certify the following:

- A. The erosion control measures included in the Soil Erosion Control Plan comply with the requirements of 327 IAC 15-5-7 and 15-5-9 and the plan complies with applicable state, county, and local erosion control requirements;
- B. The erosion control measures will be implemented in accordance with the plan;
- C. The appropriate state, county, or local erosion control authority and the county Soil and Water Conservation District (SWCD) office have been sent a copy of the erosion control plan for review; and
- D. Implementation of the erosion control measures will be conducted by personnel trained in erosion control practices.

Operator Responsibility Statement:

By signing this Notice of Intent letter, I certify under penalty of law that this document and all attachments were prepared under my direction or supervision in accordance with a system designed to assure that qualified personnel properly gather and evaluate the information submitted. Based on my inquiry of the person or persons who manage the system, or those persons directly responsible for gathering the information, the information submitted is, to the best of my knowledge and belief, true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations.

Signature of Operator _____ Date _____

In addition to this form, completed in full, please submit the following:

- _____ proof of publication in a newspaper of general circulation in the affected area notifying the public that a construction activity is to commence, including the start date, end date, and location of the project, and the name and address or phone number of the contact person;
- _____ \$100 check or money order payable to the Indiana Department of Environmental Management.

Mail to: Indiana Department of Environmental Management
 Office of Water Management
 100 North Senate Avenue, P.O. Box 6015
 Indianapolis, IN 46206-6015
 Attention: Permits Section, Storm Water Desk

Questions regarding Soil Erosion Control Plan development or implementation may be directed to your local SWCD or Department of Natural Resources office. Questions regarding the Notice of Intent may be directed to the Rule 5 contact person at 317/232-8760 or 800/451-6027. The NOI should be submitted only after your Soil Erosion Control Plan has been submitted to your local SWCD. Any person initiating earth disturbing activity before submittal of the Erosion Control Plan, the NOI, and the \$100 filing fee is considered to be operating without a permit and subject to enforcement and penalty under IC 13-7-10-5, IC 13-7-12, IC 13-7-11, or any combination thereof.

Rule 5. Storm Water Run-Off Associated with Construction Activity

327 IAC 15-5-1 Purpose

Authority: IC 13-1-3-4; IC 13-1-3-7; IC 13-7-7; IC 13-7-10-1

Affected: IC 13-1-3; IC 13-7

Sec. 1. The purpose of this rule is to reduce pollutants, principally sediment as a result of soil erosion, in storm water discharges into surface waters of the state from sites where construction activity disturbs five (5) acres or more of the site. However, in contemplation of recent federal court decisions, persons with sites greater than one (1) acre but less than five (5) acres are invited to comply with this rule as well. (*Water Pollution Control Board; 327 IAC 15-5-1; filed Aug 31, 1992, 5:00 p.m.: 16 IR 23; errata, 16 IR 898; readopted filed Jan 10, 2001, 3:23 p.m.: 24 IR 1518*)

327 IAC 15-5-2 Applicability of general permit rules

Authority: IC 13-1-3-4; IC 13-1-3-7; IC 13-7-7; IC 13-7-10-1

Affected: IC 13-1-3; IC 13-7

Sec. 2. The requirements under this rule apply to all persons who:

- (1) do not obtain an individual NPDES permit under 327 IAC 15-2-6;
- (2) meet the general permit rule applicability requirements under 327 IAC 15-2-3; and
- (3) are involved in construction activity, which includes clearing, grading, excavation, and other land disturbing activities, except operations that result in the disturbance of less than five (5) acres of total land area and which are not part of a larger common plan of development or sale.

(*Water Pollution Control Board; 327 IAC 15-5-2; filed Aug 31, 1992, 5:00 p.m.: 16 IR 23; readopted filed Jan 10, 2001, 3:23 p.m.: 24 IR 1518*)

327 IAC 15-5-3 General permit rule boundary

Authority: IC 13-1-3-4; IC 13-1-3-7; IC 13-7-7; IC 13-7-10-1

Affected: IC 13-1-3; IC 13-7

Sec. 3. Facilities existing within the boundaries of the state of Indiana affected by this rule are regulated under this rule. (*Water Pollution Control Board; 327 IAC 15-5-3; filed Aug 31, 1992, 5:00 p.m.: 16 IR 23; readopted filed Jan 10, 2001, 3:23 p.m.: 24 IR 1518*)

327 IAC 15-5-4 Definitions

Authority: IC 13-1-3-4; IC 13-1-3-7; IC 13-7-7; IC 13-7-10-1

Affected: IC 13-1-3-1.5; IC 13-4.1; IC 13-7-1

Sec. 4. In addition to the definitions contained in IC 13-7-1, IC 13-1-3-1.5, 327 IAC 1, 327 IAC 5, and 327 IAC 15-1-2, the following definitions apply throughout this rule:

- (1) "Agricultural land use" means use of land for the production of animal or plant life, including forestry, pasturing or yarding of livestock, and planting, growing, cultivating, and harvesting crops for human or livestock consumption.
- (2) "Erosion" means the detachment and movement of soil, sediment, or rock fragments by water,

wind, ice, or gravity.

(3) "Erosion control measure" means a practice, or a combination of practices, to control erosion and resulting sedimentation and/or off-site damages.

(4) "Erosion control plan" means a written description and site plan of pertinent information concerning erosion control measures.

(5) "Land disturbing activity" means any manmade change of the land surface, including removing vegetative cover, excavating, filling, transporting, and grading. In the context of this rule, agricultural land disturbing activities, coal mining activities permitted by the DNR under IC 13-4.1, and active landfills permitted by the Indiana department of environmental management where the permit requires soil erosion control are excluded.

(6) "Nonagricultural land use" means commercial use of land for the manufacturing and wholesale or retail sale of goods or services, residential or institutional use of land intended primarily to shelter people, highway use of land including lanes, alleys, and streets, and other land uses not included in agricultural land use.

(7) "Operator" means the person required to submit the NOI letter under this article, and required to comply with the terms of this rule.

(8) "Site" means the entire area included in the legal description of the land on which land disturbing activity is to be performed.

(Water Pollution Control Board; 327 IAC 15-5-4; filed Aug 31, 1992, 5:00 p.m.: 16 IR 23; readopted filed Jan 10, 2001, 3:23 p.m.: 24 IR 1518)

327 IAC 15-5-5 Additional NOI letter requirements

Authority: IC 13-1-3-4; IC 13-1-3-7; IC 13-7-7; IC 13-7-10-1

Affected: IC 13-1-3; IC 13-7

Sec. 5. In addition to the NOI letter requirements under 327 IAC 15-3, the following information must be submitted by the operator with a NOI letter under this rule:

(1) A brief description of the construction project, including, but not limited to, a statement of the total acreage of the site.

(2) Estimated timetable for land disturbing activities and installation of erosion control measures.

(3) Statement of the number of acres to be involved in land disturbing activities.

(4) A written certification by the operator that:

(A) the erosion control measures included in the erosion control plan comply with the requirements under sections 7 and 9 of this rule and that the plan complies with applicable state, county, or local erosion control requirements;

(B) the erosion control measures will be implemented in accordance with the plan;

(C) verification that an appropriate state, county, or local erosion control authority and the soil and water conservation district office have been sent a copy of the plan for review; and

(D) verification that implementation of the erosion control plan will be conducted by personnel trained in erosion control practices.

(5) Proof of publication in a newspaper of general circulation in the affected area that notified the public that a construction activity under this rule is to commence.

(Water Pollution Control Board; 327 IAC 15-5-5; filed Aug 31, 1992, 5:00 p.m.: 16 IR 24; errata filed Sep

10, 1992, 12:00 p.m.: 16 IR 65; readopted filed Jan 10, 2001, 3:23 p.m.: 24 IR 1518)

327 IAC 15-5-6 Deadline for submittal of a NOI letter; additional information

Authority: IC 13-1-3-4; IC 13-1-3-7; IC 13-7-7; IC 13-7-10-1

Affected: IC 13-1-3; IC 13-7

Sec. 6. All information required under 327 IAC 15-3 and section 5 of this rule shall be submitted to the commissioner prior to the initiation of land disturbing activities. (*Water Pollution Control Board; 327 IAC 15-5-6; filed Aug 31, 1992, 5:00 p.m.: 16 IR 24; readopted filed Jan 10, 2001, 3:23 p.m.: 24 IR 1518*)

327 IAC 15-5-7 General conditions for construction activity erosion control measures

Authority: IC 13-1-3-4; IC 13-1-3-7; IC 13-7-7; IC 13-7-10-1

Affected: IC 13-1-3; IC 13-7

Sec. 7. (a) The operator shall develop an erosion control plan in accordance with the requirements under this section.

(b) The following requirements shall be met on all sites during the period when active land disturbing activities occur:

(1) Sediment-laden water which otherwise would flow from the site shall be detained by erosion control practices appropriate to minimize sedimentation in the receiving stream. No storm water shall be discharged from the site in a manner causing erosion in the receiving channel at the point of discharge.

(2) Appropriate measures shall be taken by the operator to minimize or eliminate wastes or unused building materials, including, but not limited to, garbage, debris, cleaning wastes, wastewater, and other substances from being carried from a site by run-off. Proper disposal or management of all wastes and unused building materials, appropriate to the nature of the waste or material, is required.

(3) Sediment being tracked from a site onto public or private roadways shall be minimized. This can be accomplished initially by a temporary gravel construction entrance in addition to a well-planned layout of roads, access drives, and parking areas of sufficient width and length, or other appropriate measures.

(4) Public or private roadways shall be kept cleared of accumulated sediment. Bulk clearing of accumulated sediment shall not include flushing the area with water. Cleared sediment shall be returned to the point of likely origin or other suitable location.

(5) All on-site storm drain inlets shall be protected against sedimentation with straw bales, filter fabric, or equivalent barriers meeting accepted design criteria, standards, and specification for that purpose.

(6) The following items apply during the time the construction activity is taking place:

(A) Storm water drainage from adjacent areas that naturally pass through the site shall be controlled by diverting it around disturbed areas. Alternatively, the existing channel must be protected and/or improved to prevent erosion or sedimentation from occurring.

(B) Run-off from a disturbed area shall be controlled by one (1) or more of the following measures:

- (i) Except as prevented by inclement weather conditions or other circumstances beyond the control of the operator, appropriate vegetative practices will be initiated within seven (7) days of the last land disturbing activity at the site regulated by this rule. Appropriate vegetative practices include, but are not limited to, seeding, sodding, mulching, covering, or by other equivalent erosion control measures.
- (ii) The erosion control plan shall be implemented on disturbed areas within the construction site. The plan shall include erosion control measures as appropriate, such as, but not limited to, the following:

- (AA) Sediment detention basins.

- (BB) Sediment control practices, such as filter strips, diversions, straw bales, filter fences, inlet protection measures, slope minimization, phased construction, maximizing tree coverage, temporary and permanent seeding of vegetation, mulching, and sodding.

All measures involving erosion control practices shall be designed and installed under the guidance of a qualified professional experienced in erosion control and following the specifications and criteria under this subsection. All other nonengineered erosion control measures involving vegetation should be installed according to accepted specifications and criteria under this subsection.

(c) During the period of construction activity at a site, all erosion control measures necessary to meet the requirements of this rule shall be maintained by the operator.

(d) All erosion control measures required to comply with this rule shall meet the design criteria, standards, and specifications for erosion control measures established by the department in guidance documents similar to, or as effective as, those outlined in the Indiana Handbook for Erosion Control in Developing Areas from the division of soil conservation, Indiana department of natural resources and the Field Office Technical Guide from the Soil Conservation Service. The erosion control plan shall include, but is not limited to, the following:

- (1) A map of the site in adequate detail to show the site and adjacent areas, including the following:

- (A) Site boundaries and adjacent lands which accurately portray the site location.

- (B) Lakes, streams, channels, ditches, wetlands, and other water courses on and adjacent to the site.

- (C) One hundred (100) year floodplains, floodway fringes, and floodways.

- (D) Location of the predominant soil types which may be determined by the United States Department of Agriculture, SCS County Soil Survey, or an equivalent publication, or as determined by a certified professional soil scientist.

- (E) Location and delineation of vegetative cover such as grass, weeds, brush, and trees.

- (F) Location and approximate dimensions of storm water drainage systems and natural drainage patterns on, and immediately adjacent to, the site.

- (G) Locations and approximate dimensions of utilities, structures, roads, highways, and paving.

- (H) Site topography, both existing and planned, at a contour interval appropriate to indicate drainage patterns.

- (I) Potential areas where point source discharges of storm water may enter ground water, if any.

(2) A plan of final site conditions on the same scale as the existing site map showing the site changes.

(3) A site construction plan shall include, but is not limited to, the following:

(A) Locations and approximate dimensions of all proposed land disturbing activities.

(B) Potential locations of soil stockpiles.

(C) Locations and approximate dimensions of all erosion control measures necessary to meet the requirements of this rule.

(D) Schedule of the anticipated initiation and completion dates of each land disturbing activity, including the installation of erosion control measures needed to meet the requirements of this rule.

(E) Provisions, including a schedule, for maintenance of the erosion control measures during construction.

(F) Where feasible, preserve vegetation that exists on the site prior to the initiation of land disturbing activities.

(Water Pollution Control Board; 327 IAC 15-5-7; filed Aug 31, 1992, 5:00 p.m.: 16 IR 24; readopted filed Jan 10, 2001, 3:23 p.m.: 24 IR 1518)

327 IAC 15-5-8 Project termination

Authority: IC 13-1-3-4; IC 13-1-3-7; IC 13-7-7; IC 13-7-10-1

Affected: IC 13-1-3; IC 13-7

Sec. 8. (a) The operator shall plan an orderly and timely termination of the land disturbing activities which shall include the following:

(1) Allowing the installation of utility lines on the site, whenever practicable, prior to final land grading, seeding, and mulching of the site.

(2) Implementing erosion control measures which are to remain on the site.

(b) The commissioner may, subsequent to termination of a project, inspect the site to evaluate the adequacy of the remaining erosion control measures.

(c) Maintenance of the remaining erosion control measures shall be the responsibility of the occupier of the property after the operator has terminated land disturbing activities. *(Water Pollution Control Board; 327 IAC 15-5-8; filed Aug 31, 1992, 5:00 p.m.: 16 IR 25; readopted filed Jan 10, 2001, 3:23 p.m.: 24 IR 1518)*

327 IAC 15-5-9 Standard conditions

Authority: IC 13-1-3-4; IC 13-1-3-7; IC 13-7-7; IC 13-7-10-1

Affected: IC 13-1-3; IC 13-7

Sec. 9. The standard conditions for NPDES general permit rules under 327 IAC 15-4 shall apply to this rule. *(Water Pollution Control Board; 327 IAC 15-5-9; filed Aug 31, 1992, 5:00 p.m.: 16 IR 26; readopted filed Jan 10, 2001, 3:23 p.m.: 24 IR 1518)*

327 IAC 15-5-10 Inspection and enforcement

Authority: IC 13-13-5-2; IC 13-15-1-2; IC 13-15-2-1; IC 13-18-3-1; IC 13-18-3-2; IC 13-18-3-3; IC 13-18-3-13; IC 13-18-4-1; IC 13-18-4-3

Affected: IC 13-14-10; IC 13-15-7; IC 13-18-3; IC 13-18-4; IC 13-30

Sec. 10. (a) The department or its designated representative may inspect any site involved in land disturbing activities regulated by this rule at reasonable times. The erosion control plan must be readily accessible for review at the time of the inspection.

(b) All persons engaging in land disturbing activity on a site shall be responsible for complying with the soil erosion control plan for that site and the provisions of this rule.

(c) The department shall investigate potential violations of this rule to determine which person may be responsible for the violation. The department shall, if appropriate, consider public records of ownership, building permits issued by local units of government, and other relevant information, which may include site inspections, soil erosion control plans, notices of intent, and other information related to the specific facts and circumstances of the potential violation. Any person causing or contributing to a violation of any provisions of this rule shall be subject to enforcement and penalty under IC 13-14-10, IC 13-15-7, and IC 13-30.

(d) If remaining erosion control measures are not properly maintained by the person occupying or owning the property, the department may pursue enforcement against that person for correction of deficiencies under 327 IAC 15-1-4. (*Water Pollution Control Board; 327 IAC 15-5-10; filed Aug 31, 1992, 5:00 p.m.: 16 IR 26; filed Mar 23, 2000, 4:15 p.m.: 23 IR 1912; readopted filed Jan 10, 2001, 3:23 p.m.: 24 IR 1518*)

327 IAC 15-5-11 Notification of completion

Authority: IC 13-1-3-4; IC 13-1-3-7; IC 13-7-7; IC 13-7-10-1

Affected: IC 13-1-3; IC 13-7

Sec. 11. The operator shall notify the commissioner, in writing, upon completion of the construction activity. (*Water Pollution Control Board; 327 IAC 15-5-11; filed Aug 31, 1992, 5:00 p.m.: 16 IR 26; readopted filed Jan 10, 2001, 3:23 p.m.: 24 IR 1518*)

THE DEVELOPER'S CONTINUING RESPONSIBILITY

The Indiana Department of Environmental Management has determined that the development of a residential or commercial subdivision is a single construction project. The “land disturbing activity” of the general permit includes home or building construction as well as the public improvements, and that the responsibility under a general permit is not complete until all homes and other structures are fully constructed and that there will be no further “land disturbing activity” in the development. Therefore, the owner or developer continues to be responsible for implementation of the erosion control plan during home or building construction in the project. The owner or developer should consider the ramifications of independent builders’ practices which may cause a violation of the requirements and conditions of 327 IAC 15 and the developer’s general permit thereunder. The builder and the builder’s subcontractors must be made aware of the importance of erosion control plan so that the builder may comply with the appropriate erosion control practices. The following is suggested contractual language which may be utilized in agreements with builders and outlines the responsibility of the individual builders. Developers should continue to monitor the erosion control practices of all contractors because they remain primarily responsible to IDEM for compliance with their general permit under 327 IAC 15-5 (Rule 5).

Compliance with the Soil Erosion Control Plan

(a) The Developer has established and implemented an erosion control plan pursuant to the requirements and conditions of Rule 5 of 327 IAC 15. Storm Water Run-Off Associated with Construction Activity. Builder acknowledges that Builder has received a copy of the plan and agrees to take all erosion control measures contained therein as the plan applies to “land disturbing activity” undertaken by Builder or Builder’s subcontractors, and agrees to comply with the terms of the Developer’s general permit under Rule 5 as well as all other applicable state, county or local erosion control authorities. All erosion control measures shall be performed by personnel trained in erosion control practices and shall meet the design criteria, standards, and specifications for erosion control measures established by the Indiana Department of Environmental Management in guidance documents similar to, or as effective as, those outlined in the Indiana Handbook for Erosion Control in Developing Areas from the Division of Soil Conservation, Indiana Department of Natural Resources.

(b) The Builder shall indemnify and hold Developer harmless from and against and liability, damage, loss, claims, demands and actions of any nature whatsoever which may arise out of or are connected with, or are claimed to arise out of or connected with, any work done by Builder, Builder’s employees, agents, or subcontractors which is not in compliance with the erosion control plan implemented by the Developer

Outstanding State Resource Water

1. The Blue River in Washington, Crawford and Harrison Counties from river kilometer 91.77 to river kilometer 18.52.
2. Cedar Creek in Alen and DeKalb Counties from river kilometer 22.06 to its confluence with the St. Joseph River.
3. The North Fork of Wildcat Creek in Carroll and Tippecanoe Counties from river kilometer 69.41 to river kilometer 7.76
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5. The Indiana portion of Lake Michigan
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Exceptional-Use Waters

1. Big Pine Creek in Warren County downstream of the State Road 55 bridge near the Town of Pine Village to its confluence with the Wabash River.
2. Mud Pine Creek in Warren County from the bridge on the County road between Brisco and Rainsville to its confluence with Big Pine Creek.
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7. Rattlesnake Creek in Fountain County from the bridge on County Road 450 North to its confluence with Bear Creek.
8. The small tributary to Bear Creek in Fountain County within the Portland Arch Nature Preserve which enters Bear Creek at the sharpest bend and has formed the small natural bridge called Portland Arch.
9. Blue River from the confluence of the West and Middle Forks of the Blue River in Washington County downstream to its confluence with the Ohio River.
10. The South Fork of Blue River in Washington County from the Horner's Chapel Road bridge downstream to its confluence with Blue River.
11. Lost River and all surface and underground tributaries upstream from the Orangeville Rise (T2N, R1Q, Section 6) and the Rise of Lost River (T2N, R1W, Section 7) and the mainstream of the Lost River from the Orangeville Rise.